

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>JOSEPH GREGORY MAISONET,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 1:22-CV-151</b>
	)	
<b>ERIE COUNTY PRISON MENTAL</b>	)	
<b>HEALTH, et al,</b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM ORDER**

This action was received by the Clerk of Court on May 16, 2022. The matter was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

On February 24, 2023, Magistrate Judge Lanzillo issued a Report and Recommendation recommending that Plaintiff's Amended Complaint be dismissed for failure to state a claim in accordance with 28 U.S.C. § 1915(e), but that Plaintiff be provided with a final opportunity to amend. ECF No. 10. Plaintiff has not filed objections.

"If a party objects timely to a magistrate judge's report and recommendation, the district court must 'make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.'" *EEOC v.*

*City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) *quoting* 28 U.S.C. § 636(b)(1). Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Local Rule 72(D)(2).

After *de novo* review of the Original and Amended Complaints, together with the Orders and Report and Recommendation by Magistrate Judge Lanzillo, the following order is entered:

AND NOW, this 20th day of April 2023;

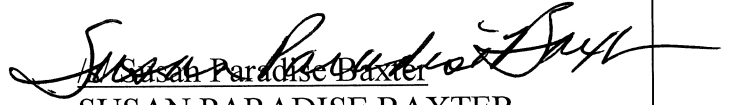
IT IS ORDERED that the Complaint and the Amended Complaint are dismissed, without prejudice, for failure to state a claim in accordance with 28 U.S.C. § 1915(e).

IT IS FURTHER ORDERED that Plaintiff is permitted one additional opportunity to attempt to correct the pleading deficiencies outlined in the Report. Plaintiff is advised that, if he wishes to plead a viable claim against Wexford, Stairways, or a municipality such as Erie County, he must allege facts giving rise to a plausible inference that those entities adopted a specific policy, custom, or practice that caused his injury. Plaintiff can also attempt to identify and sue the individuals who personally engaged in the unlawful conduct, in this case, the healthcare professionals who treated him. *See Rode v.*

*Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988) (“In order to sustain a § 1983 claim against an individual acting under color of state law, a plaintiff must demonstrate that the defendant was personally involved in the alleged violations of his or her federal rights.”).

**Plaintiff's second amended complaint shall be filed by May 18, 2023. In the event that no second amended complaint is filed, this case shall be dismissed.**

AND, IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued on February 24, 2023 [ECF No. 10] is adopted as the opinion of the court.

  
SUSAN PARADISE BAXTER  
United States District Judge